

United States

Office of Government Ethics

P.O. Box 14108

Washington, D.C. 20044



(Conflicts)

26

MAR - 4 1988

Honorable David Pryor
Chairman
Subcommittee on Federal Services
Post Office and Civil Service
Committee on Governmental Affairs
Washington, D.C. 20510-6250

Dear Mr. Chairman:

This is in response to your letter of February 22, 1988 in which you requested the views of this Office on the application of 5 U.S.C. 7351 to the proposed federal leave sharing program, the potential abuses of such a program if the restrictions of section 7351 did not apply and any safeguards that should be established to prevent such abuses.

First, this Office technically does not have enforcement responsibility for 5 U.S.C. § 7351. There is, however, a similar provision in the model standards of conduct for executive branch employees found at 5 C.F.R. 735.202(d). That regulation prohibits the same conduct as section 7351 with very limited exceptions. Therefore, in a sense the Office has responsibility for the same kind of proscription.

In my opinion the gift of annual leave is a gift. The offer of it by a subordinate to an official supervisor would be prohibited by the regulation. Indeed while the regulation has an exception for certain special nonrecurring occasions outside the work relationship where friends might voluntarily offer a gift, the exception requires that if an individual who is also a supervisor is to be the recipient, the gift must be voluntary and it must be nominal. While the illness of a supervisor may be a nonrecurring event, the gift of even one hour of annual leave will, even at present salary levels, fall outside reasonable notions of nominal value. Therefore, even the present exception in the model regulation would not be applicable.

Nonetheless I believe that a truly "blind" leave pool would not pose a problem under this regulation. A blind pool would be leave offered without knowledge of or interest in the ultimate recipient. If, however, employees who provided leave to the pool could designate or even suggest a recipient and that recipient were a supervisor, such designation would be tantamount to an offer and thus run afoul of the regulation as it now stands. In our view this designation, if honored, would still constitute a gift to a supervisor and be prohibited. Of course a leave bank without a designation of beneficiary would eliminate this problem.

Obviously, the statute and the regulation were intended to prohibit supervisors from abusing their positions and employees from currying favor from those who supervise them. The basic concept of the restriction is a very good one. On the other hand, employees do develop honest and deep friendships with their colleagues and there are certainly instances where voluntary gifts can be made and accepted without any potential harm.

Therefore, in the area of leave sharing you might wish to consider the following kinds of safeguards. These, of course, are not intended to be exclusive.

1. In any case where an individual recipient has been designated, regardless of supervisory relationship, the gift must be strictly voluntary without coercion from any individual. A sanction for coercion might be helpful in inhibiting the solicitation of gifts by a supervisor for himself or for others.
2. Assuming the gift is voluntary, an individual could designate a gift of leave to a supervisor if that supervisor was not reasonably expected to return to a position supervising the donor when the need for the leave ceased. This would be useful when the supervisor was terminally ill, had suffered an injury which would prohibit his returning to his prior position, or where the donating employee would not reasonably be expected to hold a position supervised by the recipient upon his return.

If these or similar kinds of safeguards were provided for by statute and the provisions of 5 U.S.C. § 7351 were amended accordingly, it would then be appropriate to amend the model standards of conduct at 5 C.F.R. 735.202(d).

If you have any questions about our suggestions or the role of this Office with regard to the statute, please do not hesitate to contact me.

Sincerely,



Frank Q. Nebeker
Director



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MAR 28 1988

Honorable James C. Miller III
Director
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Miller:

This is in response to the request of March 24, 1988, for our views on H.R. 3981, which would make 5 U.S.C. §7351 (relating to gifts to superiors) inapplicable to leave transfers under certain experimental programs covering Federal employees, except as the Office of Personnel Management may otherwise prescribe.

Generally, the restrictions of section 7351 are desirable components of the rules governing Federal employment relationships. The provisions of that section are intended to prohibit supervisors from abusing their positions, and employees from currying favor from those who supervise them. It seems desirable to generally exempt leave-bank programs from the prohibitions of section 7351.

We have no objection to the enactment of H.R. 3981.

Sincerely,

Frank Q. Nebeker
Director